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CALDARELLI, MICHAEL F. FINLEY,
JEFFREY P. HUGHES, STEPHEN R.
LARSON, WILLIAM P. RUTLEDGE,
CPI INTERNATIONAL, INC.

[Additional Counsel Appear on Signature Blocks]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CONTINUUM CAPITAL, on Behalf of Itself)
and All Others Similarly Situated,)

Plaintiff,)

vs.)

MICHAEL TARGOFF, O. JOE)
CALDARELLI, MICHAEL F. FINLEY,)
JEFFREY P. HUGHES, STEPHEN R.)
LARSON, WILLIAM P. RUTLEDGE, CPI)
INTERNATIONAL, INC. AND COMTECH)
TELECOMMUNICATIONS CORP.)

Defendants.)

Case No. CV 10-02987 JW HRL

**STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER GOVERNING
CONFIDENTIAL AND HIGHLY
CONFIDENTIAL INFORMATION**

(MODIFIED BY THE COURT)

1 **IT IS HEREBY STIPULATED AND AGREED** by the undersigned counsel for the
 2 parties to the above-captioned action that discovery in this action may involve the production of
 3 information which one or more party in good faith reasonably believes to contain information that
 4 is non-public, proprietary, commercially sensitive and/or protected by statutory or other legal
 5 privilege that requires the protections provided in this Stipulation and Order. Accordingly, **IT IS**
 6 **HEREBY STIPULATED** that:

7 1. Whereas the parties have been engaged in ongoing discussions and reached certain
 8 agreements regarding discovery scheduling, and in the interest of furthering the informal exchange
 9 of documents, the parties hereby agree to be bound by the terms of this Stipulation and Protective
 10 Order immediately upon execution by the parties. Any information and documents already
 11 provided to counsel by the parties, informally or otherwise, shall be covered by the terms of this
 12 Stipulation and Protective Order.

13 2. Any documents produced, deposition testimony or other information given by or on
 14 behalf of any party or third party, and any information derived therefrom may be designated by
 15 such party or third party as “Confidential Information” within the meaning of this Stipulation and
 16 Protective Order. Confidential Information shall include, without limitation, documents,
 17 testimony and other information (including, without limitation, discovery responses) that contain
 18 trade secrets, proprietary information, commercially sensitive and/or non-public information about
 19 the financial, business or personal affairs of any of the parties.

20 3. Any documents produced, deposition testimony or other information given by or on
 21 behalf of any party or third party, and any information derived therefrom may be designated by
 22 such party or third party as “Highly Confidential – Attorneys Eyes Only Information” within the
 23 meaning of this Stipulation and Protective Order. Highly Confidential – Attorneys Eyes Only
 24 information shall include, without limitation, documents, testimony and other information
 25 (including, without limitation, discovery responses) that contain information that is sufficiently
 26 sensitive (whether financial, business, personal or otherwise) or proprietary that disclosure under
 27 the protections afforded to information designated as “Confidential Information,” without further
 28 protection, would be insufficient.

4. The designation by any producing party of any discovery material as either “Confidential Information” or “Highly Confidential – Attorneys Eyes Only Information” shall constitute a representation that such discovery material has been reviewed by an attorney for the producing party and that there is a good faith belief that such designation is valid.

5. Deposition testimony containing or relating to Confidential Information or Highly Confidential – Attorneys Eyes Only Information may itself be designated as Confidential Information or Highly Confidential – Attorneys Eyes Only Information either during the deposition or within ten (10) calendar days following delivery of the transcript to the parties by written notice sent by counsel to all parties. Each court reporter participating in any such deposition shall be provided with a copy of this Protective Order and shall adhere to its provisions. Each court reporter shall mark the designated portions of such designated deposition transcript(s) with the legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY,” as appropriate, shall separately bind those portions of the deposition transcript, and shall place substantially on the cover of any such transcript the following legend:

- **FOR CONFIDENTIAL INFORMATION: THIS TRANSCRIPT CONTAINS INFORMATION DESIGNATED “CONFIDENTIAL” PURSUANT TO AN ORDER OF THE COURT UNDER WHICH THERE ARE PENALTIES FOR IMPROPER USE OR DISCLOSURE.**
- **FOR HIGHLY CONFIDENTIAL INFORMATION: THIS TRANSCRIPT CONTAINS INFORMATION DESIGNATED “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” PURSUANT TO AN ORDER OF THE COURT UNDER WHICH THERE ARE PENALTIES FOR IMPROPER USE OR DISCLOSURE.**

6. Documents, including discovery responses, or other tangible materials may be designated as Confidential Information or Highly Confidential – Attorneys Eyes Only Information by stamping the word “Confidential” or “Highly Confidential – Attorneys Eyes Only” on the document or other materials. Inadvertent failure to designate materials as Confidential Information or Highly Confidential – Attorneys Eyes Only Information at the time of production

1 may be remedied at any time thereafter by written notice. Upon the service of such notice, the
 2 identified materials shall be fully subject to this Order as if the materials had been initially
 3 designated as Confidential Information or Highly Confidential – Attorneys Eyes Only
 4 Information.

5 7. To the extent either party is required to produce documents or materials that are
 6 subject to a confidentiality agreement with a third party, such documents or information may also
 7 be designated “Confidential” or “Highly Confidential – Attorneys Eyes Only” as appropriate
 8 under this Stipulation and Protective Order.

9 8. Except with the prior written consent of the party designating the subject
 10 information as Confidential Information or upon prior order of the Court, Confidential Information
 11 shall not be disclosed to any person other than “Confidential – Qualified Persons,” who are
 12 defined to consist of the following:

- 13 a. The Court and Court personnel (including court reporters), in the manner
 14 provided by paragraph 13 hereof;
- 15 b. The parties to this action;
- 16 c. Counsel of record to the parties to this action, including attorneys,
 17 paralegal, clerical, and secretarial staff employed by such counsel
 18 (including outside copying services and similar vendors);
- 19 d. Directors, officers, executives and employees of a party to this action;
- 20 e. Court reporters, videographers (and their staffs) providing reporting
 21 services in connection with this litigation;
- 22 f. Persons identified in the discovery materials as an author or a recipient of
 23 the specific information marked as Confidential Information, and directors,
 24 officers and employees of such a recipient;
- 25 g. Deposition witnesses; and
- 26 h. Outside experts, advisors or consultants retained by counsel of record in this
 27 action.

1 9. Except with the prior written consent of the party designating the subject
 2 information as Highly Confidential – Attorneys Eyes Only Information or upon prior order of the
 3 Court obtained upon noticed motion, Highly Confidential – Attorneys Eyes Only Information shall
 4 not be disclosed to any person other than “Highly Confidential – Qualified Persons,” who are
 5 defined to consist of the following:

- 6 a. The Court and Court personnel (including court reporters), in the manner
 7 provided by paragraph 13 hereof;
- 8 b. Outside counsel of record to the parties to this action, including attorneys,
 9 paralegal, clerical, and secretarial staff employed by such counsel
 10 (including outside copying services and similar vendors);
- 11 c. Court reporters, videographers (and their staffs) providing reporting
 12 services in connection with this litigation;
- 13 d. Persons identified in the discovery materials as an author or a recipient of
 14 the specific information marked as Highly Confidential – Attorneys Eyes
 15 Only Information, and directors, officers and employees of such a recipient;
- 16 e. Outside experts, advisors or consultants retained by counsel of record in this
 17 action; and
- 18 f. Deposition witnesses.

19 10. Highly Confidential – Attorneys Eyes Only Information shall not be disclosed to
 20 any director, officer, executive or employee of any defendant, except:

- 21 a. With the prior written consent of the party designating the subject
 22 information as Highly Confidential – Attorneys Eyes Only Information;
- 23 b. Upon prior order of the Court obtained upon noticed motion; or
- 24 c. To persons identified in the discovery materials as an author or a recipient
 25 of the specific information marked as Highly Confidential – Attorneys Eyes
 26 Only Information, and directors, officers and employees of such a recipient.

27 11. Prior to any disclosure of Confidential Information to any Confidential – Qualified
 28 Person and prior to any disclosure of Highly Confidential – Attorneys Eyes Only Information to

1 any Highly Confidential – Qualified Person — other than those Confidential – Qualified Persons
 2 defined in paragraphs 8(a)-(f) and Highly Confidential – Qualified Persons defined in paragraphs
 3 9(a)-(d) and 10(c), respectively — counsel of record for the party proposing to make such
 4 disclosure shall ensure that a copy of this Stipulation and Protective Order has been delivered to
 5 such person, and shall obtain that person’s signed certification agreeing to be bound by the terms
 6 of this Stipulation and Protective Order. Counsel of record for each party shall maintain a list of
 7 the names of all persons to whom such documents or information is disclosed and such list shall
 8 be available for inspection by counsel for the party claiming confidentiality upon order of the
 9 Court following a showing of good cause. Witnesses shown Confidential Information or Highly
 10 Confidential – Attorneys Eyes Only Information shall not be permitted to retain copies of such
 11 information.

12 12. Any person receiving Confidential Information or Highly Confidential – Attorneys
 13 Eyes Only Information shall not reveal such information (including its contents, or any portion or
 14 summary thereof) to or discuss such information (including its contents, or any portion or
 15 summary thereof) with any person who is not entitled to receive such information, as set forth
 16 above in paragraphs 8 and 9, respectively. Persons having knowledge of Confidential Information
 17 or Highly Confidential – Attorneys Eyes Only Information by virtue of their participation in the
 18 conduct of this litigation shall use it only for purposes of this litigation, and not for any other
 19 purpose.

20 13. In the event that counsel for any party decides to file in or submit to this Court any
 21 Confidential Information, Highly Confidential – Attorneys Eyes Only Information, or information
 22 derived therefrom or any papers containing or making reference to such information, such
 23 Confidential Information, Highly Confidential – Attorneys Eyes Only Information, or any
 24 documents containing such Confidential Information or Highly Confidential – Attorneys Eyes
 25 Only Information shall be filed with the Court only pursuant to and in accordance with Civil Local
 26 Rule 79-5, including, without limitation, the requirement that a party seeking to file, submit, or
 27 refer to information designated by another party as Confidential or Highly Confidential –
 28

1 Attorneys Eyes Only file a motion for an order sealing the Confidential or Highly Confidential
2 information in accordance with the procedure set forth in Civil Local Rule 79-5(d).

3 14. A party who disagrees with another party's Confidential Information or Highly
4 Confidential – Attorneys Eyes Only Information designation must nevertheless abide by the same
5 until the matter is resolved by agreement or by order of the Court. If a dispute with regard to a
6 particular document arises, the parties agree to meet and confer to resolve the issue.

7 15. Entering into, agreeing to and/or producing or receiving Confidential Information
8 or Highly Confidential – Attorneys Eyes Only Information discovery material or otherwise
9 complying with the terms of this Stipulation and Order shall not:

10 (a) operate as an admission by any party that any particular Confidential
11 Information or Highly Confidential – Attorneys Eyes Only Information discovery material
12 contains or reflects trade secrets or any other type of confidential information;

13 (b) prejudice in any way the rights of a party to seek a determination by the
14 Court whether any discovery material or Confidential Information or Highly Confidential –
15 Attorneys Eyes Only Information should be subject to the terms of this Stipulation and
16 Order; or

17 (c) prevent the parties to this Stipulation and Order from agreeing to alter or
18 waive the provisions or protections provided for herein with respect to any particular
19 discovery material.

20 16. Nothing in this Stipulation and Protective Order shall limit any producing party's
21 use of its own documents or the retention of a litigation file by any party to, or counsel for any
22 party to the litigation during the course of the litigation, or shall prevent any producing party from
23 disclosing its own Confidential Information or Highly Confidential – Attorneys Eyes Only
24 Information to any person.

25 17. The parties hereto stipulate that they will not assert in this action that the attorney-
26 client privilege, work-product doctrine, common-interest doctrine or other applicable privilege has
27 been waived by reason of inadvertent disclosure of otherwise privileged documents. Privileged
28 documents in connection with this matter that are inadvertently disclosed by any party shall

1 remain privileged provided that demand for their return is made by the disclosing party with
 2 reasonable promptness after the law firm representing that party herein learns of the inadvertent
 3 disclosure. Upon receipt of such demand, the receiving party shall promptly return to the
 4 designated counsel for the disclosing party any and all copies of such document or thing. The
 5 receiving party shall not use such information for any purpose other than in connection with a
 6 motion to compel. The party returning such material may then move the Court for an order
 7 compelling production of the material if, in good faith, it believes that it has a basis for doing so,
 8 but said motion shall not assert as a ground for entering such an order the fact or circumstance of
 9 the inadvertent production, but may assert other circumstances, including without limitation prior
 10 open use of the material in the litigation without any claim of inadvertent production, to establish
 11 the fact of an intentional and knowing waiver of applicable privileges by the producing party. The
 12 producing party shall promptly submit the contested material to the Court for in camera review, if
 13 the Court so directs.

14 18. During the pendency of the Action, any party objecting to the designation of any
 15 discovery material or testimony as Confidential Information or Highly Confidential – Attorneys
 16 Eyes Only Information discovery material must deliver to the producing party a written statement
 17 identifying the reason or reasons for the objection. If the parties are unable to resolve the
 18 objection after conferring in good faith, the objecting party may file a motion with the Court for an
 19 order vacating the designation. Within seven (7) days, or longer for good cause shown or pursuant
 20 to stipulation between the parties, the producing party shall submit a response setting forth the
 21 basis for the designation, and why it should be maintained. While such an application is pending,
 22 the discovery material or testimony in question shall be treated as Confidential or Highly
 23 Confidential discovery material pursuant to this Stipulation and Order. In connection with any
 24 such application, the burden of persuasion to maintain the designation shall fall on the producing
 25 party.

26 19. This Stipulation and Protective Order does not constitute a waiver by any party of
 27 any right it otherwise would have to object to disclosing or producing any information or item on
 28

1 any ground not addressed herein. Similarly, no party waives any right to object on any ground to
 2 the use in evidence of any of the materials covered by this Stipulation and Protective Order.

3 20. This Stipulation and Protective Order, and production of documents with or
 4 without a “Confidential” or “Highly Confidential” designation hereunder, is not intended to, nor
 5 does it, waive any obligations or duties of the parties or their counsel to otherwise maintain the
 6 confidence of information or materials in their possession.

7 21. This Stipulation and Protective Order does not govern at trial. An agreement
 8 concerning the treatment of Confidential and Highly Confidential information at trial shall be
 9 reached at pre-trial conference.

10 22. Within ninety (90) days of the termination of this litigation, including all appeals, if
 11 any, all Confidential Information and Highly Confidential – Attorneys Eyes Only Information
 12 which has been produced by the designating party to another party during the course of this
 13 litigation shall either be destroyed or delivered to counsel for the designating party. However,
 14 counsel may retain one copy of all documents filed with the Court and one copy of all deposition
 15 transcripts for archival purposes provided that they continue to treat such documents as
 16 confidential in accordance with the provisions of this Stipulation and Protective Order.

17 23. The Court retains jurisdiction to make such amendments, modifications and
 18 additions to this Stipulation and Protective Order as it may from time to time deem appropriate.
 19 **For a period of six months after the final termination of this action, this court will retain jurisdiction to enforce this**

20 24. The termination of proceedings in this litigation shall not relieve any person to **order.**
 21 whom Confidential Information or Highly Confidential – Attorneys Eyes Only Information has
 22 been disclosed from the obligations of this Stipulation and Protective Order.

23 25. In the event the action is remanded to the Superior Court for the State of California
 24 (the “State Court”), the terms of this Stipulation and Protective Order shall remain in effect as if
 25 entered by the State Court. The parties shall further cooperate to promptly submit to the State
 26 Court a substantially identical Stipulation and Protective Order for entry therein.

27 **SO STIPULATED:**

28 //

//

1 DATED: July 13, 2010

BRUALDI LAW FIRM, P.C.
RICHARD B. BRUALDI
GAITRI BOODHOO
LAUREN C. WATSON

4 /s/

RICHARD B. BRUALDI

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As Co-Lead Counsel on Behalf of Plaintiffs

10 DATED: July 13, 2010

HULETT HARPER STEWART LLP
KIRK B. HULETT
BLAKE MUIR HARPER
SARAH P. WEBER

13 /s/

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Attorneys for Plaintiff

19 DATED: July 13, 2010

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23 /s/

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*Attorneys for Defendants Michael Targoff, O. Joe
Caldarelli, Michael F. Finley, Jeffrey P. Hughes,
Stephen R. Larson, William P. Rutledge, and CPI
International, Inc.*

1 DATED: July 13, 2010

2 SKADDEN, ARPS, SLATE, MEAGHER
3 & FLOM LLP
4 GARRETT J. WALTZER
5 LANELLE K. MEIDAN
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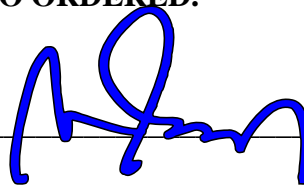
15 I, Garrett J. Waltzer, am the ECF User whose ID and
16 password are being used to file this STIPULATION
17 AND [PROPOSED] PROTECTIVE ORDER
18 GOVERNING CONFIDENTIAL AND HIGHLY
19 CONFIDENTIAL INFORMATION. In compliance
20 with General Order 45, X.B., I hereby attest that each
21 of the signatories identified herewith has concurred in
22 this filing.

23 **ORDER:**

24 **AS MODIFIED BY THE COURT,**

25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26 Dated: July 15, 2010

27 

28 Howard R. Lloyd
United States Magistrate Judge

CERTIFICATION

I certify my understanding that confidential or highly confidential information is being provided to me pursuant to the terms and restrictions of a “Stipulation and Protective Order” (the “Order”) entered by order of the United States District Court, Northern District of California (the “Court”) in the action entitled Continuum Capital v. Michael Targoff, O. Joe Caldarelli, Michael F. Finley, Jeffrey P. Hughes, Stephen R. Larson, William P. Rutledge, CPI International, Inc. and Comtech Telecommunications Corp. (Case No. CV 10-02987 JW HRL). I further certify that I have been provided a copy of and either have read or been informed of the contents of the Order and hereby agree to subject myself to the jurisdiction of the Court and, in the event the action is remanded to the Superior Court for the State of California, to the jurisdiction of that court, for purposes of enforcement of the terms and restrictions of the Order. I shall not disclose documents or information designated as “Confidential” or “Highly Confidential – Attorneys Eyes Only” to anyone who is not entitled to such disclosure under the Order. I understand that violation of this Order may be punishable by contempt of Court.

Executed this ____ day of _____ in the year _____.
